Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

WILLIAM CRAIG, III,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

JAMES R. EPSTEIN
Counsel of Record
ELIZABETH A. KAVENY
EPSTEIN, ZAIDEMAN & ESRIG, P.C.
120 South Riverside Plaza
Suite 1150
Chicago, Illinois 60606-3910
(312) 207-0005
Attorneys for Petitioner

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether this Court should review the Seventh Circuit's decision, which directly conflicts with other circuits, holding that exigent circumstances justified a warrantless intrusion into the defendant's home where the suspect was unaware of the police surveillance;

(2) Whether this Court should review the Seventh Circuit's decision sanctioning the district court's material expansion of the concept of probable cause to include cases where there exists only subjective suspicion on the part of police; and

(3) Whether this Court should review the Seventh Circuit's decision sanctioning the district court's material expansion of the doctrine of inevitable discovery to include cases where:

(a) there is no nexus between the location searched and the evidence sought, and

(b) the officers have failed to make any attempt to obtain a lawful warrant.

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

William Craig III respectfully petitions this Court to issue a writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit in *United States v. Craig*, No. 93-1761 (December 2, 1993). In *Craig*, in direct conflict with other United States courts of appeals, the Seventh Circuit found exigent circumstances to exist to justify a warrantless arrest despite the absence of any reasonable belief on the part of the officers that Craig either knew or would learn at any moment that he was under surveillance. Second, the court held that officers had probable cause to arrest Craig based solely upon the officers' suspicions arising from the location of the shooting and the fact that Craig had had a verbal confrontation with the victim earlier that day. This finding of probable cause greatly expands the concept of

probable cause as set forth and followed by federal courts. Finally, through an expansion of the doctrine of inevitable discovery, the court held evidence was admissible because the officers could have obtained a proper search warrant to search Craig's vehicle and his home. The court made this finding (1) despite the lack of a nexus between the location searched and the evidence being searched for and (2) without the officers having made any attempt whatsoever to obtain a lawful warrant.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is unpublished. A copy of the opinion is attached as part of the Appendix to this Petition. (App. 1) Also included in the Appendix is a copy of the Report and Recommendation written by a Magistrate Judge of the United States District Court for the Northern District of Illinois relating to the points raised in this Petition. (App. 3)

STATEMENT OF JURISDICTION

The jurisdiction of the district court was invoked by the United Statues pursuant to 18 U.S.C. § 3231. Specifically, defendant William Craig III was charged in a three-count indictment with three violations of federal law: 18 U.S.C. § 111 (assault on a United States Postal Service employee with a deadly weapon): 18 U.S.C. § 924(c) (use of a firearm in connection with a crime of violence): and 18 U.S.C. § 1114 (attempted murder of a United States Postal Service employee).

Defendant William Craig III filed his timely Notice of Appeal on March 26, 1993, from the district court's final judgment in this matter entered on March 18, 1993. The

United States Court of Appeals for the Seventh Circuit had jurisdiction pursuant to 28 U.S.C. § 1291.

This Court has jurisdiction to review the decision of the court of appeals by writ of certiorari pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF CASE

On March 5, 1992, William Craig III was employed by the United States Postal Service at the South Suburban Postal Facility ("the Facility") located in Bedford Park, Illinois (R.1). On that same day, a fellow employee of Craig's, Sheila Morrow, was shot and wounded as she left her office at the Facility (R.35).

A. Actions of Law Enforcement Officers

Richard Melton, the Facility's controller, was immediately notified of the occurrence (R.35). Melton promptly informed the Chicago Postal Inspection Department (R.29, Ex. A at 2). Melton told the Chicago inspectors that he believed Craig was a suspect in the assault (R.29, Ex. A at 2).

The postal inspectors in Chicago contacted Postal Inspector R.D. Ligon in Indiana (R.35; R.29, Ex. A at 3). Ligon was told that Craig was a possible suspect in a shooting that had occurred earlier that day in the Facility and that he was believed to be on his way home to Merrillville, Indiana (R.35; R.29, Ex. A at 3-4). Craig's address was given to Ligon (R.35; R.29, Ex. A at 3), who passed it on to the Merrillville Police Department (R.29, Ex. A at 4).

Ligon drove to Craig's home where he was met by Sergeant DeHaven of the Merrillville Police Department

(R.35 at 4; R.29, Ex. A at 4). DeHaven told Ligon that Craig's home was under surveillance by several unmarked police cars (R.35; R.29, Ex. A at 5).

Shortly thereafter, Craig drove down the street and into his driveway (R.35; R.29, Ex. A at 5). From his vehicle, Craig opened the door to his garage, which was attached to his home, using an electric garage door opener (R.29, Ex. A at 5). Craig pulled up the driveway, into the garage, and again using the electric opener, closed the garage door behind him (R.29, Ex. A at 5). Craig was unaware of the presence of law enforcement personnel (R.35).

As the door came down, Ligon and several Merrillville police officers ran toward Craig's garage (R.35; R.29, Ex. A at 5). Ligon grabbed the door, ripped the door off its metal track and forced the door back up (R.35). The police entered Craig's garage with their weapons drawn and ordered him at gunpoint out of his vehicle and on to the floor of the garage (R.88 at 4). No warrant authorizing either a search or arrest had been obtained or even sought by law enforcement (R.82 at 25).

After questioning the defendant, the officers searched Craig's vehicle and located a gun inside the vehicle (R.29, Ex. A at 6). Craig was taken to the police station, where he was interrogated (R.29, Ex. A at 6-7). During this custodial interrogation, Craig made oral and written statements to the police (R.22 at 21).

B. Knowledge of Law Enforcement Officers

Morrow did not see who had shot her (R.35). In fact, no one was able to tell law enforcement personnel who shot her (R.82 at 32). Additionally, no one had seen anyone in the area from which the shot came (R.22 at 53-55).

The Chicago inspectors were aware that the Facility normally had limited access, but that the access was not limited on this day due to construction work being done at the Facility (R.22 at 53-55). The inspectors were aware that construction workers had been given access to the Facility and that security measures had been reduced (R.22 at 53-55).

Melton informed the Chicago inspectors that Morrow had had a verbal confrontation earlier that morning with Craig, whom they were told was also a postal employee at the Facility (R.35).[1] Melton additionally told inspectors that he believed Craig was a suspect in the shooting (R.35).

Chicago postal inspectors recognized Craig's name and recalled that postal authorities had received a letter from Craig earlier that year (R.35). Craig had become concerned about the lack of security in the Facility's employee parking lot and had written to the postal authorities to share his concern (R.35). The letter concluded by stating:

> I feel if something is not done about this, violence will be eventual. This we must avoid. Will you please look into this? (R.35)

C. District Court's Ruling on the Motion to Suppress

Craig was charged with attempted murder of a postal employee by means of a deadly weapon (R.13). Craig moved to suppress the evidence obtained following his arrest (R. 20). Specifically, Craig sought the suppression of the hand-

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[1] Apparently, Morrow believed that Craig had falsified his time card in an attempt to receive pay for overtime which she believed he had not worked. Craig denied that he had done anything wrong and attempted to explain that he had worked overtime for other supervisors during the time questioned.

gun found in his vehicle and the statements made at the police station shortly thereafter (R.20). Judge Brian Barnett Duff referred the matter to Magistrate Judge Rebecca R. Pallmeyer (R.28).

The magistrate judge recommended that Craig's motion to suppress evidence of the gun and his alleged post-arrest statements be denied (R.35; App. 41). The magistrate found that the officers had probable cause to arrest Craig based upon the information known to them (App. 32). The magistrate further found the existence of exigent circumstances to justify the warrantless arrest based upon (1) the officers' fear for their own safety and (2) the officer's belief that any delay in arrest could have enabled Craig to dispose of evidence (App. 38-39). Finally, the magistrate found that, assuming there was probable cause to arrest the defendant, the police would have had probable cause to obtain a search warrant which would have led to the inevitable discovery of the gun (App. 40).

The magistrate's recommendation was accepted by Judge Brian Barnett Duff, who denied the motion. The case was later transferred to Judge Marvin E. Aspen who presided over the trial.

D. The Seventh Circuit's Decision

On appeal, Craig argued that the District Court had erroneously determined that the arresting officers had probable cause to arrest him. Craig further argued the absence of any exigent circumstances which would justify the officers' warrantless entry into his garage to make the arrest.

The Seventh Circuit affirmed the district court's ruling, finding that the district court had correctly determined that the arresting officers had probable cause to arrest Craig and that exigent circumstances justified the officers'

warrantless entry into Craig's garage to make the arrest (App. 1-2). In addition, the Seventh Circuit held that even if the officers' warrantless entry into Craig's garage violated the Fourth Amendment, the district court properly allowed the evidence under the "inevitable discovery" exception to the exclusionary rule (App. 16-17).

REASONS FOR GRANTING THE WRIT

(1) Exigent Circumstances

The Seventh Circuit's finding of exigent circumstances to justify the warrantless arrest on these facts is a marked departure from other United States courts of appeals. It is well settled that "[c]ircumstances are not normally considered exigent where the suspects are unaware of police surveillance." *United States v. Tobin*, 923 F.2d 1506, 1511 (11th Cir. 1991), *cert. denied*, 112 S.Ct. 229, 116 L.Ed.2d 243 (1991). The considerations in such cases were discussed by the Ninth Circuit, which stated:

> Suspects who are inside their homes and unaware of their impending arrests generally have no reason immediately to flee, nor would they ordinarily have any reason immediately to destroy the fruits of their crime. Likewise, without more there is little reason for them to endanger the lives of themselves or others. Consequently, law enforcement officers confronting this type of situation can, without great difficulty, maintain surveillance of the premises and either wait to effectuate a valid public arrest when the suspects emerge or seek an arrest warrant from a neutral and detached magistrate.

United States v. Lynch, 934 F.2d 1226, 1232 (11th Cir. 1991), *cert. denied*, 112 S.Ct. 885, 116 L.Ed.2d 788 (1992),

citing *United States v. George*, 883 F.2d 1407, 1414-15 (9th Cir. 1989) (citations omitted).

Other United States courts of appeals have declined to find exigent circumstances justifying warrantless intrusions based upon officers' fear that their presence may be detected. *Lynch*; *George*. This is true even where the officers believe the suspect has committed a serious crime and may be armed and dangerous. In *George*, the Court stated:

> Undoubtedly the officers here reasonably believed that the nature of Appellant's crimes was indicative of his danger and, further, that he possessed evidence that he might destroy. But we cannot conclude on the record before us that the officers reasonably believed that Appellant either knew or was in substantial danger of learning of his imminent capture. Nor can we in good conscience conclude that . . . the officers here reasonably believed that even absent that knowledge immediate entry into Appellant's apartment was necessary to prevent him from either currently endangering lives or currently destroying evidence. . . . We believe instead that the officers could have conducted surveillance of the premises and either awaited Appellant's exit to effect a valid public arrest or, at minimum, make a good faith attempt to obtain an arrest warrant.

Id.

Contrary to the rulings of the Ninth Circuit in *George* and the Eleventh Circuit in *Lynch*, the Seventh Circuit here found exigent circumstances because "[t]he officers did not know that Craig was unaware that they were watching him." (App. 14) There is no evidence to suggest that Craig *had* become aware of the surveillance being

conducted. In fact, the United States itself contends that "[u]p until this point [when the officers announced that they were the police, and they ordered Craig to put his hands in the air and exit his vehicle], the defendant had not been aware of the officers' presence."

In light of these facts, the Seventh Circuit's holding is tantamount to a holding that the mere presence of officers performing surveillance creates exigent circumstances. The effect of the Seventh Circuit's decision is that officers can always enter a suspect's home rather than conducting surveillance and securing a warrant because the officers cannot be certain whether the suspect will become aware of their presence at some time before the warrant is obtained.

The Seventh Circuit's decision directly conflicts with the holdings of other United States courts of appeals under which exigent circumstances are created *only* when the suspect either knows or will learn imminently that he is in immediate danger of apprehension.

This case presents the Court with an opportunity to establish a clear, uniform standard on the issue of whether exigent circumstances exist where officers are surveilling a suspect who is unaware of their presence. Accordingly, the Court should grant *certiorari*.

(2) Probable Cause

In addition to finding exigent circumstances, the Seventh Circuit affirmed the district court's finding of probable cause, which can only be viewed as expanding the concept of probable cause beyond the recognized guidelines set forth and currently followed by federal courts. The facts known to the postal inspectors, as well as the inferences drawn by the inspectors from these facts, upon which the

district court found probable cause, *at best* constituted suspicion.[2] Probable cause for arrest requires more than bare suspicion. *United States v. Burrell*, 963 F.2d 976, 986 (7th Cir. 1992), *cert. denied*, 113 S.Ct. 357, 112 L.Ed.2d 270 (1992). The quantum of evidence required to establish probable cause to arrest requires more than "even a 'strong reason to suspect.' " *United States v. Fisher*, 702 F.2d 372, 374 (2d Cir. 1983), citing *Henry v. United States*, 361 U.S. 98, 101, 80 S.Ct. 168, 170, 4 L.Ed.2d 134 (1959); *Brinegar v. United States*, 338 U.S. 160, 175, 69 S.Ct. 1302, 1310, 93 L.Ed. 1879 (1940).

The district court's finding of probable cause to arrest Craig was based upon an agreed submission of facts from the parties. The agreed submission contained only five facts relevant to the determination of probable cause:

1. Ms. Morrow was shot while she was in the postal facility (the "Facility");
2. She did not see who shot her;
3. She had a dispute about overtime with Mr. Craig several hours earlier;
4. Despite not having seen who shot her, she told the nurse to have a Mr. Melton "get" the "man we spoke about this morning (Mr. Craig)"; and
5. Mr. Craig had written a letter complaining about car burglaries at the Facility at some earlier time which some people felt was "strange."

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[2] The Seventh Circuit acknowledged that the relevant issue is what the postal inspectors knew at the time. "[O]nly if the postal inspectors had probable cause to arrest Craig was Craig's arrest by the Merrillville police lawful." (App. 7, fn.1)

The postal inspectors were advised that a shooting had taken place at the Facility. The inspectors knew that the Facility was undergoing construction, however, and that the usual limited access policy was not in place. Accordingly, although the inspectors suspected that the shooter was an employee of the Facility or someone familiar with its layout, they had insufficient knowledge to limit the pool of suspects to any particular group of persons, much less to one person—Craig—specifically. The shooter could have been an employee, a construction worker, or someone off the street who had gained access to the Facility because of the reduced security. The inspectors were advised that there had been no eyewitness to the shooting, that no one had been seen in the area from where the shot came, and that the victim herself did not know who had shot her.

Even if the limited access policy had been in effect, which it was not, the location of the shooting by itself is insufficient to establish probable cause. At most, the location would suggest a group of people—employees with access to the facility—not one specific employee. In determining whether probable cause exists to believe that a particular person has committed a given crime, the Supreme Court has indicated that information which suggests that any of a group of persons might have committed a crime but did not reasonably single out any one person from that group is insufficient to establish probable cause. *Wong Sun v. United States*, 371 U.S. 471, 481, 83 S.Ct. 407, 414 (1963); *Fisher*, 702 F.2d at 375.

The earlier confrontation even when considered with the location, is still insufficient to establish probable cause. With regard to the confrontation, the postal inspectors did not know who had confronted who, whether either party showed anger or threatened violence, or how the matter

had been resolved. Certainly the mere fact that a "confrontation" had taken place between Morrow and Craig did not give rise to anything more than mere suspicion.

The facts, as they were known to law enforcement personnel at the time of the defendant's arrest, did not constitute probable cause to arrest the defendant. They may be evaluated, at best, as casting suspicion on Craig.

The district court's finding of probable cause based upon the postal inspector's suspicions is a clear departure from the currently accepted standards of probable cause. In affirming the district court's finding of probable cause, the Seventh Circuit has sanctioned this departure. This case presents the Court with an opportunity to re-establish the uniformly accepted standards of probable cause. Accordingly, the Court should grant certiorari.

(3) Inevitable Discovery

Under the doctrine of inevitable discovery, as it is currently recognized by federal courts, the government must establish that the information ultimately or inevitably would have been discovered by lawful means. *Nix v. Williams*, 467 U.S. 431, 444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). The government must show that it would have sought and obtained a proper search warrant, which naturally would have led to the discovery of the evidence. *United States v. Buchanan*, 910 F.2d 1571, 1573 (7th Cir. 1990).

The Seventh Circuit incorrectly assumes that because the officers had probable cause to arrest Craig, the officers had probable cause to search Craig's vehicle and his home. In fact, in order to obtain a search warrant, officers must show a connection between the item(s) being sought and the location to be searched.

There is no such connection between a gun used to commit a crime and the defendant's home. *United States v. Charest*, 602 F.2d 1015 (1st Cir. 1979). In *Charest*, the defendant, unlike here, was already known to have shot the victim when the authorities conducted a warrantless search of his home. Finding a warrant to search the defendant's home invalid, the court wrote:

> Common sense tells us that it is unlikely that a murderer would hide in his own home a gun used to shoot someone. If defendant shot [the victim], as the affidavit states, one of the first things he would do would be to get rid of the gun. The handgun could easily have been disposed of permanently within a short time after the crime. It is not reasonable to infer that defendant drove from Somerset to Fall River [Massachusetts] and then casually placed a weapon which had fired more than one bullet into a man on the shelf in his bedroom closet.

Id. at 1017. The Court in *Charest* further stated that it was "unable to find any case in which a search warrant was issued for a person's home on the sole basis that a handgun had been used by that person in the commission of the type of crime where the bullets could be traced to the gun." *Id.* The Court held that there was nothing in the affidavit from which a factual finding could be made that the gun used in the shooting was probably located at the defendant's home. *Id.*[3]

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[3] Although *Charest* has been distinguished by the Seventh Circuit in *United States v. Buchanan*, 910 F.2d 1571 (1990), the basis of that distinction does not apply here. In *Buchanan*, the Court found that it would be reasonable to search Buchanan's hotel room for a gun because he was a fugitive living in temporary quarters under a false name. Whereas, in *Charest*, and in this case, the place to be searched was the defendant's home where he had been living openly for a long time and where anyone looking for him would know to look. *Buchanan*, at 1574.

There is nothing contained within the warrant affidavit which would have been known other than as a result of the illegal search and seizure, which connects the gun used in the shooting to the defendant's car or his home. Indeed, unlike *Charest*, the defendant here was not even known to be the person who had done the shooting, but was only considered as a "possible suspect". Even assuming knowledge that Mr. Craig had committed the shooting, which officers did not have, he could have easily discarded the weapon during the long drive from the Facility to his home in Indiana. A neutral magistrate could not have found a "fair probability" that the gun would be located in the defendant's car or home. Based upon the above, the government could not have obtained a proper search warrant.

To qualify for admissibility under the inevitable discovery rules, "there must be a reasonable probability that the evidence in question would have been discovered by lawful means, and the prosecution must demonstrate that the lawful means which made discovery inevitable were possessed by the police and were being actively pursued prior to the occurrence of the illegal conduct." *United States v. Satterfield*, 743 F.2d 827, 846 (11th Cir. 1984), citing *United States v. Brookins*, 614 F.2d 1037, 1042 n. 8, 1048 (5th Cir. 1980).

At all times, the officers had access to radio communication and could have attempted to obtain a warrant to arrest the defendant or to conduct a search, but took absolutely no steps to do so. Instead, with the defendant unaware of their presence and despite easy access to a neutral magistrate, the officers chose to make a destructive and tumultuous, warrantless entry and arrest. Accordingly, the government is unable to demonstrate that the officers were pursuing lawful means, and therefore, cannot estab-

lish that the evidence obtained by unlawful methods fall within the doctrine of inevitable discovery.

Because the government could not have obtained a proper warrant and cannot begin to demonstrate that the officers were actively pursuing a warrant prior to the unlawful search and arrest, the evidence obtained by the officers is not admissible under the inevitable discovery doctrine. The district court's finding to the contrary and the Seventh Circuit's affirmation of this finding run contrary to the requirements set forth by federal courts prior to the admission of evidence under the inevitable discovery doctrine.

This case presents the Court with an opportunity to establish a clear, uniform standard on the issue of inevitable discovery. Accordingly, the Court should grant certiorari.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

JAMES R. EPSTEIN
Counsel of Record
ELIZABETH A. KAVENY
EPSTEIN, ZAIDEMAN & ESRIG, P.C.
120 South Riverside Plaza
Suite 1150
Chicago, Illinois 60606-3910
(312) 207-0005

Attorneys for Petitioner

Date: February, 1994

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[UNPUBLISHED ORDER NOT TO BE CITED PER CIRCUIT RULE 53]

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Argued October 6, 1993
Decided December 2, 1993

Before

Hon. DANIEL A. MANION, Circuit Judge
Hon. ILANA DIAMOND ROVNER, Circuit Judge
Hon. WILBUR F. PELL, JR., Senior Circuit Judge

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

No. 93-1761 *v.*

WILLIAM CRAIG III,
Defendant/Appellant.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 92 CR 168—Marvin E. Aspen, *District Judge.*

ORDER

William Craig III appeals the denial of his motion to suppress evidence that police officers obtained after arresting him in the garage of his home in Merrillville, Indiana. Because the district court correctly determined that the arresting officers had probable cause to arrest Craig

and that exigent circumstances justified their warrantless entry into his garage to make the arrest, we affirm.

I. BACKGROUND

The facts are undisputed. Sheila Morrow was employed at the South Suburban Postal Facility located in Bedford Park, Illinois. On March 5, 1992, at approximately 12:20 p.m., Morrow was shot as she left her office at the Postal Facility. The course of the bullet through Morrow's body suggested that she had been shot from the catwalk above the Postal Facility's workroom, across the hall from the entrance to her office.

That morning, Morrow had met with Craig at the Postal Facility, where Craig was employed as a letter-sorting machine operator. During this meeting Morrow had accused Craig of falsifying his time card in order to draw overtime pay to which he was not entitled. Craig denied any wrongdoing, contending that he had been working for other supervisors during the time in question. Morrow escorted Craig to meetings with several other supervisors, all of whom reported that they had not requested that Craig work any overtime hours. Craig was seen leaving the Facility at 9:20 a.m. and was not scheduled to return until 10:30 that evening (Craig's regular hours of work were 10:30 p.m. to 7:00 a.m.). Thereafter Morrow met with Richard Melton, the controller of the Facility, to tell him about Craig's phantom overtime hours and about her confrontation with Craig that morning.

A nurse on duty at the Facility attended to Morrow immediately after the shooting. Morrow related to the nurse that she had not seen who had shot her but told the nurse to "tell Mr. Melton, the man we spoke about this morning, get him." Morrow also stated that she had seen the

man she "got into it with" that morning at the Facility. Paramedics then rushed Morrow to the hospital. The nurse relayed Morrow's statements to Melton, who reported to Postal Inspectors that Morrow had been shot, that Morrow had a confrontation with Craig three hours before she was shot, that Craig, although not scheduled to work, had been seen at the Postal Facility that morning, and that he believed Craig had shot Morrow.

Postal Inspector Eduardo Santa Cruz recognized Craig's name from a handwritten letter that he had received from Craig nine days earlier. The letter stated that "auto burglaries have become rampant on the postal parking lot [at the Postal Facility]." Craig noted in this letter that his car had been burglarized in December of 1991 and that other postal employees had been victimized as well. The letter concluded: "This violation causes undue stress and anxiety on ones [sic] workmanship. I feel if something is not done about this, violence will be eventual. This we must avoid. Will you please look into this?"

At approximately 1:00 p.m. postal inspectors in Chicago contacted Postal Inspector Richard Ligon in Indiana about the shooting. They told him that Craig, who lived in Merrillville, had a confrontation with the victim that morning and that Craig was a suspect in the shooting. They also read Ligon Craig's letter about the burglary of his automobile and informed him that Craig had been seen at the Postal Facility that morning. Ligon gave Craig's address to a dispatcher at the Merrillville Police Department and told him that Craig might be headed home. Craig's home was about an hour's drive from the Postal Facility. Ligon arrived at Craig's residence at about 1:18 p.m., where he was met by Sergeant Paul DeHaven of the Merrillville Police Department. DeHaven informed Ligon that Craig's home was under surveillance by police officers in several unmarked police cars.

At approximately 1:23 p.m. (approximately one hour after the shooting), Craig drove down the street and into his driveway. He was unaware that police officers were watching his every move. Craig opened the door to his garage (which was attached to his residence) with an electric garage door opener. As Craig drove into his garage, Postal Inspector Ligon, Sergeant DeHaven, and Detective Kenneth O'Deen sprinted toward Craig's garage with their guns drawn. By this time the garage door had begun to close. DeHaven grabbed the door and pulled it open, ripping the door off its metal track. As they entered the garage DeHaven and O'Deen announced that they were police officers, but Craig did not hear the announcement and did not become aware of the presence of the police until after they were in his garage. DeHaven again announced that he was a police officer and directed Craig to exit his truck. Craig complied and walked to the rear of his truck where, at DeHaven's direction, he lay on his stomach. As he lay on his driveway being handcuffed, Craig inquired, "What's this all about?" DeHaven responded, "You know what it's about." Craig replied, "Yes, I do," or "Yes, I know." DeHaven then told him, in substance, "You're okay she's alive; we're here to get the gun." Craig told him that the gun was in his truck. DeHaven walked to the front passenger side of Craig's truck, looked inside, and saw a handgun in plain view. DeHaven seized the handgun, a loaded .38 caliber revolver.

Following his arrest, Craig was taken to the Merrillville police station. There he denied having any "arguments or altercations" with anyone that morning. He admitted that he had returned to the Postal Facility around noon that day to pick up a job application for his brother but denied shooting anyone. He claimed that he was minding his own business when an unknown man pulled a gun on

him, forced him onto the catwalk overlooking the workroom, and made him watch while he fired one round through the window or floor of the catwalk. According to Craig, the man then pressed the gun into Craig's hand, pulled out another gun, and told Craig to leave. Craig stated that he drove home but never contacted any law enforcement authorities about the incident.

Craig was charged by indictment with assaulting an employee of the United States Postal Service with a deadly weapon in violation of 18 U.S.C. § 111, using a firearm in connection with a crime of violence in violation of 18 U.S.C. § 924(c), and attempting to murder an employee of the United States Postal Service in violation of 18 U.S.C. § 1114. Craig moved to suppress the revolver that was found in his truck and the statements that he made at the police station on the ground that the evidence was obtained as the result of an unlawful, warrantless arrest. A magistrate judge recommended that Craig's motion be denied, concluding that: (1) the officers had probable cause to arrest Craig; (2) exigent circumstances justified the officers' entry into Craig's garage to make the arrest; and (3) even if exigent circumstances did not justify the officers' entry into Craig's garage, the revolver should not be suppressed because it inevitably would have been discovered by lawful means. The district court adopted the magistrate judge's recommendation.

II. DISCUSSION

We first address the issue whether the law enforcement officers had probable cause to arrest Craig. We review the district court's finding that they did for clear error. *See United States v. Spears*, 965 F.2d 262, 268-71 (7th Cir.), *cert. denied*, 113 S. Ct. 502 (1992). The second issue

is, even if the officers had probable cause to arrest Craig, whether they justifiably entered Craig's garage to make the warrantless arrest. We also review for clear error the district court's finding that exigent circumstances justified the officers' entry. *See United States v. Sewell*, 942 F.2d 1209, 1213 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 1567 (1992). Finally, the third issue is whether the pistol found in Craig's truck was admissible evidence under the doctrine of inevitable discovery. We review for clear error the district court's finding of admissibility. *See United States v. Kelly*, 991 F.2d 1308, 1311 (7th Cir. 1993); *Spears*, 965 F.2d at 271 n.3. Under the "clearly erroneous" standard of review, we will not disturb a district court's findings unless we are left with the definite and firm conviction that a mistake has been made. *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985).

A. *Probable Cause To Arrest*

The police officers arrested Craig without a warrant. A warrantless arrest is valid under the Fourth Amendment only if supported by probable cause. *Beck v. Ohio*, 379 U.S. 89, 90 (1964). Craig submits that the officers lacked probable cause to arrest him. The standard for determining whether probable cause exists is "a practical, common sense determination about whether, given all the circumstances present, it is reasonably probable that a person has committed . . . an offense." *United States v. Valencia*, 913 F.2d 378, 382 (7th Cir. 1990). "Probable cause for an arrest exists if, at the moment the arrest was made, the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent person in believing that an offense has been committed." *Hughes v. Meyer*, 880 F.2d 967, 969 (7th Cir. 1989), *cert. denied*, 495 U.S. 931 (1990).

Craig asserts that when they arrested him the officers did not have sufficient information to warrant a prudent person in believing that he had shot Morrow. According to Craig, when the officers arrested him all they knew was that Morrow had been shot at the Postal Facility, that she did not see who shot her and there were no eyewitnesses to the shooting, that Morrow had a dispute about overtime hours with him several hours earlier, and that he had written a cryptic letter complaining about the lack of security in the employee's parking lot a few months earlier. Although a police officer need not have absolute proof that the person he is arresting committed the crime, probable cause for an arrest requires more than bare suspicion. *United States v. Burrell*, 963 F.2d 976, 986 (7th Cir.), *cert. denied*, 113 S. Ct. 357 (1992). Craig argues that the aggregate of the facts within the officers' knowledge at the time of the arrest only supports a bare suspicion that he, and not someone else, shot Morrow and, as such, although the officers might have been justified in seeking him out to question him about the shooting, they were not justified in arresting him.[1]

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[1] Although both parties refer to what "the officers" knew (referring to what the police officers who arrested Craig knew when they arrested him), the relevant issue is what the postal inspectors in Chicago and Merrillville knew when they requested that the Merrillville police arrest Craig. The postal inspectors, not the Merrillville police, gathered all the facts that formed the basis of Craig's arrest. Without the information given to them by the postal inspectors, the Merrillville police lacked probable cause to arrest Craig. Thus only if the postal inspectors had probable cause to arrest Craig was Craig's arrest by the Merrillville police lawful. *See United States v. Hensley*, 469 U.S. 221, 232-33 (1985); *see also Valencia*, 913 F.2d at 383 (state officers' arrest of suspect based on DEA agent's probable cause suffices for Fourth Amendment inquiry).

In support of this argument, Craig cites *United States v. Ingrao*, 897 F.2d 860 (7th Cir. 1990). There the district court found probable cause for the defendant's arrest where law enforcement officers saw the defendant walk out of a gangway at the home of a reputed drug-trafficker while carrying a black bag, shortly after another man had made an exchange of packages in front of the gangway. The officers arrested the defendant immediately as he drove away with the bag. *Id.* at 862-63. This court reversed, holding that these facts alone did not give the officers probable cause to arrest the defendant. *Id.* at 865-66. As this court subsequently noted in *United States v. Burrell*, 963 F.2d at 986-87, the district court's finding of probable cause in *Ingrao* was clearly erroneous because it was supported only by the defendant's association with a reputed drug trafficker. Craig asserts that the only support for the finding of probable cause in this case was his association with Morrow, which consisted of a work-related disagreement with her on the day she was shot.

We agree with the magistrate judge that the evidence pointing to Craig as the shooter is not as limited as Craig would have us believe. First, there is the shooting itself. The officers knew that the shooting took place within a secured mail processing facility, to which only postal service employees had access. A keycard that only employees possessed was necessary to gain entry to the area where the shooting took place. Granted (as Craig points out) at the time Morrow was shot the Postal Facility was undergoing construction so the usual policy of limiting access to the workfloor was not in full effect. Craig contends that, given the relaxed security at the Postal Facility, Morrow's assailant could have been a construction worker or anyone else who wandered in off the street. Nonetheless, the circumstances suggest that the shooting of Mor-

row was not a random act of violence, but was accomplished by someone who knew the layout of the Postal Facility: Morrow was hit by a single bullet as she walked out of her office, and the shot was taken from a strategic location above and behind her. Although security at the Facility might have been relaxed, it did exist. Moreover, the law enforcement officers reasonably concluded that the shooter likely knew Morrow. Morrow was shot as she left her office, suggesting that the shooter knew Morrow's location. That the shooter was a postal service worker who knew Morrow was a fair inference based on these facts.

Second, Craig had a motive. Given that the law enforcement officers reasonably believed the shooter was a postal service worker who knew Morrow and that the shooter intended to shoot Morrow, the officers could reasonably conclude that whoever shot Morrow believed that he had a reason for doing so. The officers knew that Craig had a motive to shoot Morrow because they were aware that three hours before the shooting, Craig had a confrontation with Morrow, during which Morrow had accused him of fraud and had taken the first steps toward having him removed from his job. Although the officers might not have known the details of the confrontation—who confronted who, whether either party showed anger or threatened violence, or how the matter ultimately was resolved—the critical fact that Craig had argued with Morrow shortly before Morrow was shot had been conveyed to them. The officers also knew that moments after the shooting, Morrow had spontaneously named the defendant as the likely shooter. This is significant because, from the officers' perspective, Morrow was in the best position to know who had a motive to shoot her.

Third, there is corroborating evidence. The law enforcement officers were told that Craig was seen at the Postal Facility on the morning of the shooting (after he had met with Morrow) although he was not scheduled to work. They were aware that Craig lived one-hour's drive from the Postal Facility, and they saw him drive up to his home approximately one hour after the shooting. Given the information implicating Craig that they already had, the officers were not obliged to disregard Craig's timely arrival at his home as a mere coincidence.[2]

Granted, this information would not permit the conclusion that Craig was guilty of shooting Morrow. But the determination whether probable cause to arrest exists deals with probabilities, not hard certainties. *United States v. Cortez*, 449 U.S. 411, 418 (1981). These probabilities are the product of police officers' "common-sense conclusions about human behavior." *Id.*; *see also Texas v. Brown*, 460 U.S. 730, 742 (1983) ("probable cause is a flexible, common-sense standard"). We believe that the facts and circumstances known by the officers when they arrested Craig support a common-sense conclusion that Craig probably had shot Morrow because she had accused him of fraudulently requesting compensation for overtime hours. We

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[2] The government also points to Craig's letter complaining about burglary of his automobile in the Postal Facility's parking lot as evidence that supports a finding of probable cause for the officers to arrest Craig. The government submits that the letter (particularly the statement that "I feel if something is not done about [the burglary], violence will be eventual") gave the officers reason to believe that Craig was mentally or emotionally unstable enough to have shot Morrow. The magistrate judge did not rely on the letter to reach her conclusion that the officers had probable cause to arrest Craig. Neither do we. As the magistrate judge noted in her report and recommendation to Judge Aspen, the letter "can innocently be interpreted as nothing more than a complaint regarding car thefts and employee security." Only in hindsight is the letter relevant to the shooting of Morrow.

therefore agree with the district court's finding that the officers had probable cause to arrest Craig.

B. *Exigent Circumstances*

Even if the law enforcement officers had probable cause to arrest Craig, the government must justify the officers' warrantless entry into Craig's garage to effectuate the arrest.[3] The Fourth Amendment prohibits law enforce-

[3] The government concedes that the garage, which was attached to Craig's home, is a part of curtilage to Craig's home—that is, the area outside the home itself but so close to and intimately connected with the home and activities that go on there that it can reasonably be considered part of the home. *See United States v. Dunn*, 480 U.S. 294, 300 (1987). At the same time, however, the government argues that the officers did not need a warrant to arrest Craig in his garage because Craig had a lesser expectation of privacy while in his garage than he would have had in his home, particularly because he was in his truck and the garage door was open. In support of this argument the government cites *United States v. Santana*, 427 U.S. 38, 42 (1976), where the Supreme Court held that a defendant had no expectation of privacy while she stood in the doorway of her house holding a paper bag that contained drugs, and *United States v. Sewell*, 942 F.2d 1209, 1212 (7th Cir. 1991), where this court held that a defendant had no expectation of privacy while he was engaging in illegal drug deals just inside the open door to his apartment. These cases do not support the government's position, however. Unlike the defendant in *Sewell*, Craig was not overtly committing a crime in a public place when he was arrested. And *Santana* is readily distinguishable because it was a "hot pursuit" case: The officers announced themselves while they were still outside the defendant's house but were forced to chase the defendant into her house to apprehend her. In this case, Craig did not attempt to flee, and the police did not announce themselves until they were inside Craig's garage. Thus this case is governed by *Payton v. New York*, 455 U.S. 573 (1980), which holds that the Fourth Amendment prohibits law enforcement officers from making a nonconsensual, warrantless entry into a suspect's home in order to make a routine felony arrest, rather than by *Santana* or *Sewell*. Craig had an expectation of privacy while in his garage, and the government must establish that exigent circumstances justified the officers' warrantless entry.

ment officers from making a "warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." *Payton v. New York*, 445 U.S. 573, 576 (1980). A warrantless entry into a suspect's home to make an arrest is lawful, however, if the entry is justified by exigent circumstances. *Id.* at 583. The government bears the burden of proving that its agents had an objectively reasonable belief that exigent circumstances existed at the time of their warrantless entry into Craig's garage. *United States v. Dowell*, 724 F.2d 599, 602 (7th Cir.), *cert. denied*, 466 U.S. 906 (1984).

The *sine qua non* of the "exigent circumstances" exception to the requirement that law enforcement officers obtain a warrant to enter a suspect's home is the combination of "a compelling need for official action and no time to secure a warrant." *Michigan v. Tyler*, 436 U.S. 499, 509 (1978). Factors that indicate exigent circumstances include: (1) the suspect is accused of committing a grave or violent offense; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; and (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public. *See United States v. Wicks*, 995 F.2d 964, 970-71 (11th Cir. 1993); *United States v. Standridge*, 810 F.2d 1034, 1037 (11th Cir.), *cert. denied*, 481 U.S. 1072 (1987); *United States v. Williams*, 612 F.2d 735, 739 (3d Cir. 1979), *cert. denied*, 445 U.S. 934 (1980); *Dorman v. United States*, 435 F.2d 385, 392-93 (D.C. Cir. 1970) (en banc).[4]

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[4] In considering these five factors, we take heed of this court's observation in *United States v. Acevedo*, 627 F.2d 68, 70 (7th Cir.

(Footnote continued on following page)

That the third and fourth factors were present in this case cannot be disputed: We already have concluded that the officers had probable cause to believe that Craig shot Morrow. And because the officers saw Craig drive his truck into his garage immediately before they entered it to make the arrest, their belief that Craig was in the garage obviously was reasonable. The remaining factors are present in this case as well. The arresting officers were aware that Craig would be charged with, at minimum, assaulting an employee of the United States Postal Service with a deadly weapon, a very serious and violent crime. They reasonably believed that Craig was still armed when he pulled into his garage because they knew that the assailant had fired only one shot at Morrow and because, given Craig's timely arrival in Merrillville, it was unlikely that Craig had stopped on the way home from the Postal Facility to dispose of the pistol. Finally, it was likely that any delay in making the arrest would jeopardize the safety of the officers. Had the officers allowed the garage to close, Craig might have been able to shoot at them from inside the garage or the house. The officers could only speculate whether Craig had an arsenal of weapons inside his house that he could use against them once he was inside. It was safer to arrest Craig immediately than to wait for a warrant and risk a gun battle

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[4] *continued*

1980), that because of the limitless array of factual settings that might give rise to a warrantless entry into a suspect's home, a "checklist-type analysis" should not be applied in determining whether exigent circumstances justified the entry. As the *Acevedo* court advised, we use the factors only as "a guide to resolution of the underlying pragmatic question whether the exceedingly strong privacy interest in [Craig's] residence is outweighed by the risk that delay will engender injury, destruction of evidence, or escape." *Id.*

erupting in Craig's neighborhood should Craig try to escape. *See Standridge*, 810 F.2d at 1037 (risks that suspect might discover that police were watching him and that engage law enforcement officers in gun battle from inside motel room created exigent circumstances justifying warrantless entry into motel room).

Craig argues that the officers could not have reasonably believed that he would flee or engage in a shoot-out with them because he was not even aware that the officers were watching him. In support of this argument, Craig cites *United States v. Lynch*, 934 F.2d 1226 (11th Cir. 1991), *cert. denied*, 112 S. Ct. 885 (1992), where the court stated:

> Suspects who are inside their homes and unaware of their impending arrests generally have no reason immediately to flee, nor would they ordinarily have any reason immediately to destroy the fruits of their crime. Likewise, without more there is little reason for them to endanger the lives of themselves or others. Consequently, law enforcement officers confronting this type of situation can, without great difficulty, maintain surveillance of the premises and either wait to effectuate a valid public arrest when the suspects emerge or seek an arrest warrant from a neutral and detached magistrate.

Id. at 1232 (quoting *United States v. George*, 883 F.2d 1407, 1413-14 (9th Cir. 1989)).

Nevertheless, the arresting officers in this case could have reasonably believed that Craig had a reason to flee immediately, or to take actions that would jeopardize their safety. The officers did not know that Craig was unaware that they were watching him until *after* the arrest. They could only speculate whether Craig had noticed that he was being watched and planned to escape or shoot at them once the garage door closed. Although, in retrospect,

Craig's chances of successfully escaping were slim, the risk was real to the officers on the scene. They were justified in acting quickly to avoid *any* risk of Craig escaping.

Moreover, unique facts in this case created exigencies that were not present in either *Lynch* or *George*. First, unlike the law enforcement officers in those cases, the officers here had little time to set up surveillance. In *Lynch* and *George*, the law enforcement officers had the luxury of being able to set up surveillance outside the suspects' homes while the suspects were inside and unaware of the officers' activities. The suspects in those cases could have been arrested, by surprise, had they attempted to exit their homes. The officers were in the position to obtain and execute an arrest warrant before the suspects had the opportunity to resist. By contrast, the officers in this case reached Craig's home shortly before Craig did. En route home, Craig drove by unmarked police cars that were parked along the street and in the driveway of the home of one of Craig's neighbors. This gave Craig an opportunity to discover that he was being watched, even before he entered his home.

Second, unlike *Lynch* and *George*, this case involved the efforts of law enforcement authorities in two cities that are located miles apart. The officers who arrested Craig were not the same officers who gathered evidence at the scene of the shooting. The officers at the scene of the shooting had to relay information, as they discovered it, to the Merrillville Police Department. The police department had to pass along the information to the officers outside Craig's home. The information received by the officers outside Craig's home was that Craig was suspected of shooting his supervisor, that he might be armed and dangerous, and that he was on his way home. Justifiably, their primary concern was to minimize the risk to them-

selves and anyone else in the area by ensuring that Craig would not gain a tactical advantage by absconding in his home.

The likelihood that Craig would destroy evidence before law enforcement officers could secure a warrant and find the evidence also created exigent circumstances. *See United States v. De Soto*, 885 F.2d 354, 368 (7th Cir. 1989). The officers could have reasonably believed that Craig would want to prevent investigating officers from discovering the pistol, glass or dust from the Postal Facility, or gun powder residue on his skin or clothing. After all, Craig probably was aware that he was a suspect in the shooting and that law enforcement officers investigating the crime would soon be on his trail, if they weren't already. The law enforcement officers were justified in apprehending Craig before he could destroy valuable evidence.

In sum, the circumstances in this case resulted in a compelling need for action and no time to secure a warrant. Because Morrow had been shot only an hour before the officers encountered Craig, it was reasonable for the officers to believe that Craig was armed and dangerous. It also was reasonable for them to assume that Craig would flee or destroy evidence before they could secure a warrant. We therefore agree with the district court's finding that the officers' warrantless entry into Craig's garage did not run afoul of the Fourth Amendment.

C. *Inevitable Discovery*

Even if the officers' warrantless entry into Craig's garage violated the Fourth Amendment, the district court properly admitted the pistol into evidence. Under the "inevitable discovery" exception to the exclusionary rule, evi-

dence that was obtained in violation of the Fourth Amendment should not be suppressed "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means." *Nix v. Williams*, 467 U.S. 431, 444 (1984). The government satisfied its burden in this case. As noted above, the officers had probable cause to search the vehicle that Craig drove into his garage. It seems inevitable that a lawful search of Craig's truck would have turned up the pistol given that the officers discovered it in plain view on the center console between the front seats. Even if Craig had removed the pistol to his house, it appears inevitable that officers would have discovered it. Because they had probable cause to arrest Craig, the officers could have obtained a warrant to search for the pistol and other evidence in Craig's home, where he went directly after the shooting.

Finally, as the government notes, even if the officers' entry into Craig's garage were unlawful, Craig's statements at the Merrillville police station would be admissible: In *New York v. Harris*, 495 U.S. 14, 17 (1990), the Supreme Court held that statements made by an arrestee outside his home are not subject to the exclusionary rule, even if made following a warrantless, unlawful entry into the arrestee's home.

III. CONCLUSION

For the foregoing reasons, we AFFIRM the district court's denial of Craig's motion to suppress the pistol and the statements that he made at the Merrillville police station.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT – WITH ORAL ARGUMENT

Date: December 2, 1993

BEFORE:

Honorable DANIEL A. MANION, Circuit Judge
Honorable ILANA DIAMOND ROVNER, Circuit Judge
Honorable WILBUR F. PELL, JR., Senior Circuit Judge

No. 93-1761

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

WILLIAM CRAIG, III,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 92 CR 168, Marvin E. Aspen, Judge.

The judgment of the District Court is AFFIRMED, in accordance with the decision of this court entered on this date.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1967)
Case Number: 92 CR 168-1

UNITED STATES OF AMERICA
v.
William Craig, III

THE DEFENDANT:

☐ pleaded guilty to count(s) _____.
☒ was found guilty on count(s) One and Two after a plea of not guilty.

Title & Section	*Nature of Offense*	*Count Number(s)*
18 USC 111	Assault of a employee of the U.S. Postal Service with a deadly weapon	1
18 USC 924(c)(1)	Use of a Firearm during the Commissions of a crime of a violence	2

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 3, and is discharged as to such count(s).
☐ Count(s) _____ (is) (are) dismissed on the motion of the United States.
☒ It is ordered that the defendant shall pay a special assessment of $100.00, for count(s) One and Two, which shall be due ☒ immediately ☐ as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Date of Imposition of Sentence: March 18, 1993

Signature of Judicial Officer: /s/ MARVIN E. ASPEN

Name & Title of Judicial Officer: Marvin E. Aspen, U.S. District Court Judge

Date: March 18, 1993

[Judgment—Page 2 of 4]

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of Seventy-One Months on Count One. Six (6) Months on Count Two to run consecutive to Count One.

IT IS ORDERED that the defendant receive credit for time already served.

IT IS FURTHER ORDERED that the defendant receive vocational and psychological counseling.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States marshal.

☐ The defendant shall surrender to the United States marshal for this district.

* * * * *

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of Three (3) Years.

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☒ The defendant shall report in person to the probation officer in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

☐ The defendant shall not possess a firearm or destructive device.

that the defendant receive vocational and psychological counseling.

* * * * *

RESTITUTION AND FORFEITURE

RESTITUTION

☐ The defendant shall make restitution to the following persons in the following amounts:

Name of Payee	*Amount of Restitution*
Sheila Morrow	$10,000

Payments of restitution are to be made to:

☐ the United States Attorney for transfer to the payee(s).

☐ the payee(s).

Restitution shall be paid:

☐ in full immediately.

☐ in full not later than _____.

☐ in equal monthly installments over a period of ____ months. The first payment is due on the date of this judgment. Subsequent payments are due monthly thereafter.

☒ in installments according to the following schedule of payments:

The amount of the fine will be adjusted after the probation officer speaks with the victim, Sheila Morrow, and determines what out-of-pocket money the victim had to pay that the insurance company did not cover.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

FORFEITURE

* * * * *

App. 23

[Dated August 6, 1992]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

WILLIAM CRAIG III

No. 92 CR 168—Judge Brian Barnett Duff
Magistrate Judge Rebecca R. Pallmeyer

REPORT AND RECOMMENDATION

This matter is before me on referral from District Judge Brian Barnett Duff for a report and recommendation on Defendant's motion to suppress evidence obtained from him following a warrantless arrest. Defendant Craig is charged with attempted murder of a United States Postal Service employee by means of a deadly weapon, violations of Title 18 U.S.C. § 1114 (attempted murder of employee) and 18 U.S.C. § 924(c) (use of a firearm in a crime of violence). Defendant contends the government lacked probable cause to arrest him and that the circumstances did not support entry into his home to effectuate that arrest without a warrant. Accordingly, he argues that statements he made at the time of the arrest and a handgun seized as a result of the arrest must be suppressed.

STATEMENT OF FACTS

The parties have stipulated that there are no disputes of fact material to the resolution of this motion. The follow-

ing statement of facts is based upon the parties' written submissions.

On March 5, 1992, at approximately 12:20 p.m., Ms. Shelia Morrow was shot as she exited her office at the South Suburban Postal Facility ("Facility"). The course of the bullet through Ms. Morrow's body suggested she had been shot from a point across the hall from her office and above her head, possibly from the observation space ("look out gallery") above the Facility's workroom and across the hall from Ms. Morrow's office entrance. The U.S. Postal Inspection Service was promptly notified of the shooting.

Just prior to 9:20 a.m. that morning, Ms. Morrow had met with Defendant William Craig at the Facility. During this meeting, Ms. Morrow had accused Defendant of falsifying his time card in order to draw overtime pay to which he was not entitled. Defendant denied wrongdoing; he contended that he had been working for other supervisors during the time in question. Ms. Morrow escorted Defendant to meetings with several other supervisors, each of whom reported that he or she had not requested any overtime work of Defendant. Following these meetings, at approximately 10:30 a.m., Ms. Morrow met with Richard Melton, the Controller of the Facility, to tell him about the timekeeping problem and about the confrontation with Defendant that morning.

Immediately after the shooting, a nurse on duty at the Facility attended to Ms. Morrow as she lay on the floor. Ms. Morrow told the nurse that she did not see who had shot her but asked the nurse to "tell Mr. Melton, the man we spoke about this morning, get him." Ms. Morrow also stated that she had seen the man she "got into it with" that morning at the Facility. Paramedics then took Ms.

Morrow to the hospital. The nurse immediately relayed Ms. Morrow's statements to Richard Melton. By 12:30 p.m., Mr. Melton reported the shooting to U.S. Postal Inspection Service personnel. In his conversation with Postal Inspection Service officers, Mr. Melton stated that Ms. Morrow had had a confrontation with the Defendant just three hours earlier; that he believed Defendant was the suspect in this shooting; and that Defendant, although not scheduled to work at that time, had been seen in the Facility that morning.

Postal Inspector Eduardo Santa Cruz heard a reference to Defendant's name on the officers' radio. Inspector Santa Cruz recognized the name because only nine days earlier, a handwritten letter from Defendant to the Postal Inspector in Charge of the South Suburban Facility had been forwarded to the Crime Prevention Unit, where Inspector Santa Cruz is employed. Mr. Craig's handwritten letter, dated February 24, 1992, complained that "auto burglaries have become rampant on the postal parking lot here." Mr. Craig's letter stated that his own car had been burglarized and damaged in mid-December and that other postal employees had also been victimized. Mr. Craig's letter concluded:

> This violation causes undue stress and anxiety on ones workmanship.
>
> I feel if something is not done about this, violence will be eventual. This we must avoid. Will you please look into this?

At approximately 1:02 p.m., postal inspectors in Chicago contacted U.S. Postal Inspector R.D. Ligon, who was located in Indiana. Postal Police Officer Addie Davis told Ligon that a postal employee had been shot, identified Defendant as a suspect in this shooting, and provided

Defendant's address as 600 East 54th Avenue, in Merrillville, Indiana. Minutes later, Inspector Ligon spoke with Postal Inspector K. Brummell and Inspector Santa Cruz. Santa Cruz told Ligon about Mr. Craig's February 24, 1992 letter and read that letter to Officer Ligon in its entirety. Santa Cruz verified Defendant's home address. Inspector Ligon recalls that sometime between 1:05 p.m. and 1:15 p.m., a Postal Inspector or postal service employee told him that Defendant had been seen at the South Suburban Facility that morning.[1]

At approximately 1:15 p.m. Inspector Ligon received from Chicago-based officers another radio transmission in which they stated that Craig was a suspect in the shooting of Shelia Morrow and might be proceeding to his home in Merrillville, Indiana. By 1:18 p.m., Inspector Ligon had arrived near Defendant's home, where he was met by Detective Sergeant Paul DeHaven of the Merrillville, Indiana Police Department. Sergeant DeHaven, whose radio dispatcher was in contact with Bedford Park Police Department Officers and United States Postal Inspectors at the South Suburban Facility, stated that Defendant might be on his way to his residence from Bedford Park, Illinois and that Defendant might be armed and dangerous. Sergeant DeHaven told Officer Ligon that Defendant's home was under surveillance by several unmarked police cars.

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[1] This information apparently originated from the statements by Ms. Morrow to the nurse immediately after the shooting. Ms. Morrow told the nurse that Mr. Melton should be advised that she had seen the Defendant in the building that morning. Mr. Melton was already aware of the confrontation between Ms. Morrow and Defendant that had taken place prior to 9:20 a.m.; therefore, it is fair to infer that Ms. Morrow was referring, in her statement to the nurse, to having seen Defendant at the Facility on another occasion subsequent to the early morning confrontation.

Ligon proceeded to Defendant's residence, where Officers DeHaven, O'Deen, and Poling of the Merrillville Police Department were waiting for Defendant's arrival.

At approximately 1:23 p.m., Defendant Craig drove onto the street where he lives and pulled his red Ford Bronco into the garage attached to his residence. Craig was unaware of the presence of law enforcement officers. As Defendant drove in, Sergeant DeHaven and Officer O'Deen of the Merrillville Police Department and Inspector Ligon ran toward Defendant's two-car garage. Officer O'Deen entered the rear portion of the garage on the side opposite Defendant, with his gun drawn. Sergeant DeHaven arrived at the garage door as it began to close. As the door was closing, DeHaven pulled it up again with enough force to lift the door off its metal track. Both DeHaven and O'Deen announced they were law enforcement officers as they entered the garage; Defendant did not hear that announcement, however, and did not become aware of the presence of the police until after they were both in his garage with guns drawn. Sergeant DeHaven again announced he was with Merrillville Police and directed Defendant to put his hands in the air and exit the vehicle. Defendant exited his vehicle and followed instructions to lie on his stomach on the garage or driveway floor. As he was lying on the driveway floor and being handcuffed, Defendant asked law enforcement officers, "What's this all about?" Sergeant DeHaven responded, "You know what it's about." Defendant replied, "Yes, I do," or "Yes, I know." Sergeant DeHaven then told Defendant, "We're here to get the gun," and Defendant told officers the gun was "in the truck." At 1:31 p.m., Detective DeHaven and Postal Inspector Ligon observed a pistol in plain view on the center console between the front seats of the 1987 Ford Bronco that had been driven by Defendant. Law enforcement officers seized the pistol.

DISCUSSION

Defendant contends that officers lacked probable cause to arrest him at 1:23 p.m. on March 5, 1992. As a result, Defendant argues, the statements he made at the time of his arrest, evidence of the revolver, and statements he made subsequently at the police station, must be suppressed. Even if probable cause existed for the arrest, Defendant contends, the government was not justified in arresting Defendant in his home.

I. *Probable Cause*

The standard for determining whether probable cause exists is well-known, although its application depends heavily on the facts and circumstances of each case. The Seventh Circuit has characterized the probable cause decision as "a practical, common sense determination about whether, given all the circumstances present, it is reasonably probable that a person has committed . . . an offense." *United States v. Valencia*, 913 F.2d 378, 382 (7th Cir. 1990). More recently, the court described the determination in these words:

> "Probable cause for an arrest exists if, at the moment the arrest was made, the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent person in believing that an offense had been committed." *Hughes v. Meyer*, 880 F.2d 967, 969 (7th Cir.), *cert. denied*, 495 U.S. 931 (1989). "The inquiry into the existence of probable cause raises questions of 'probabilities . . . the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.' " *Id.* (quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949)). "Probable cause requires more than bare

> suspicion but need not be based on evidence sufficient to support a conviction, nor even a showing that the officer's belief is more likely true than false." *Id.* "The constitutional validity of a warrantless arrest . . . depends upon the probable cause to effectuate the arrest under the totality of the circumstances." *United States v. Colonia*, 870 F.2d 1319, 1322 (7th Cir. 1989) (citing *Illinois v. Gates*, 462 U.S. 213, 238 (1983). *See also United States v. Chaidez*, 919 F.2d 1193, 1197 (7th Cir. 1990). "The relevant inquiry is not whether specific conduct is innocent or guilty, but the level of suspicion attaching to particular kinds of noncriminal acts." *Colonia*, at 1323.

United States v. Burrell, 963 F.2d 976, 986 (7th Cir. 1992) (parallel citations omitted).

The Supreme Court described the probable cause standard in *Texas v. Brown*, 460 U.S. 730, 742 (1983), as a flexible, practical, common-sense standard. A probable cause showing is a showing only of probability, not of *prima facie* evidence of guilt. *Illinois v. Gates*, 462 U.S. 213, 235 (1983). It does not even require evidence that a belief that a crime has been committed is "more likely true than false." *Texas v. Brown*, 460 U.S. at 742.

Defendant describes the evidence in support of the government's probable cause contention in this case as limited to "a letter complaining of employee security, a quarrel with the victim and being seen at his own place of employment . . . ." (Defendant's Memorandum in Support of Motion to Suppress, at 3.)

The evidence is not quite as limited as Defendant suggests, however. First, as the government points out, there is evidence of the shooting itself. The circumstances suggest that the shooting was not a random act of violence; instead, Ms. Morrow, hit from behind by a single shot,

was the apparent intended victim of her assailant. A fair inference is that whoever did the shooting had a motive. The location of the shooting—the South Suburban Postal Facility—further limits the pool of potential suspects to postal service workers. The Facility is not a post office; it is a secured mail processing facility, to which only postal service employees ordinarily have access. Although construction was going on at the Facility at the time, it was expected that security would continue to be maintained throughout the period of the construction. That the shooter was a postal service worker remained a fair conclusion of law enforcement officers to draw.

Statements made by the victim herself narrow the field of potential suspects to one. Specifically, only moments after the shooting, Ms. Morrow stated that she had not seen who shot her but directed the nurse to "tell Mr. Melton, the man we spoke about this morning [a reference to Defendant], get him." She also stated in that conversation that she had seen Defendant in the Facility that morning—apparently at some point after the 9:20 a.m. confrontation but before the shooting at 12:20 p.m. Although Defendant was an employee at the South Suburban Facility, he worked a night shift and had no apparent reason to be in the Facility during morning hours. Ms. Morrow's statements in the aftermath of her shooting indicated that she herself immediately thought of Defendant as a person who had a motive and opportunity to hurt her.

Defendant correctly observes that the February 24, 1992 letter to the director of the South Suburban Facility, by itself, would not be sufficient to focus attention on Defendant as a suspect in the Shelia Morrow shooting. That letter can innocently be interpreted as nothing more than a complaint regarding car thefts and employee security.

Law enforcement officers might view as significant, however, the fact that, according to Defendant's letter, the burglary of his own car had occurred two months previously; that the car burglaries resulted in "undue stress and anxiety"; and that Defendant concluded that "violence will be eventual" unless corrective steps were taken. The circumstances of the letter, thus fairly suggest that the writer was experiencing stress and concerned about violence.

Finally, there were no eyewitnesses to the shooting. Law enforcement officers reasonably concluded that Ms. Morrow's assailant left the Facility immediately after she was injured and was returning to his home. Defendant did, in fact, arrive at his home in Merrillville, Indiana, a forty-five minute to one-hour commute from Bedford Park, almost exactly one hour after the shooting.

The probable cause determination "does not deal with hard certainties, but with probabilities." *United States v. Cortez*, 449 U.S. 411, 418 (1981). As the Supreme Court has explained, law enforcement officers are permitted to formulate "certain common-sense conclusions about human behavior." *Id.* Shelia Morrow was shot on March 5 by someone who had a motive to hurt her. Given the secured nature of the Facility, the pool of potential suspects was reasonably limited to postal service employees. On the morning of March 5, Ms. Morrow had accused Defendant of falsifying his time records, and had made this accusation repeatedly in the presence of other supervisors. Although he was not scheduled to work, Craig was seen in the facility that morning. He arrived at his home, approximately one hour after the shooting, approximately the same time it would have taken him to arrive there had he left the scene immediately. Most importantly, immediately after the shooting, Ms. Morrow identified only

Mr. Craig as someone the authorities should "get." Obviously, these circumstances do not require the conclusion that Defendant Craig was guilty. But "probable cause for arrest does not require that every inference in a chain of events be susceptible only of a nefarious explanation." *United States v. Herrera*, 757 F.2d 144, 149 (7th Cir. 1985). Law enforcement officers knew Ms. Morrow had been intentionally shot. The circumstances do support a common-sense conclusion that Craig was the likely shooter. This court should conclude that law enforcement officers had probable cause to arrest Defendant Craig at 1:23 p.m. on March 5, 1992.

II. *Evidence Obtained in Warrantless Arrest in Defendant's Home*

A. *Warrantless Entry*

In *Payton v. New York*, 445 U.S. 573 (1980), the Supreme Court concluded that the Fourth Amendment prohibits law enforcement officers from making a "warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." 445 U.S. at 576. Where government officers have entered the suspect's home without a warrant, the government bears the burden of establishing that its agents had an objectively reasonable belief that exigent circumstances existed at the time of the warrantless entry.[2] *United States v. Dowell*,

[2] The parties and this court have assumed that Defendant's attached garage is part of the "curtilage" to his home—that is, the area outside the home itself but so close to and intimately connected with the home and activities that go on there that it can reasonably be considered part of the home. *United States v. Dunn*, 480 U.S. 294, 300 (1987). Considering the factors outlined in *Dunn*—including the garage's proximity to the house and its enclosure—

(Footnote continued on following page)

724 F.2d 599, 602 (7th Cir.), *cert. denied*, 466 U.S. 906 (1984). Craig contends the evidence does not meet the government's burden in this case.

The government argues here that the conduct of the arresting officers was justified under several theories. First, the government contends that Defendant had no expectation of privacy at the time he was arrested, having just pulled into his open garage from the public street. Second, the government argues that the conduct of its officers constituted no more than a "knock and announce" and did not constitute a warrantless entry. Finally, the government asserts that a warrantless arrest of Defendant in his home was justified by exigent circumstances: concern for the safety of the officers and the public and the agents' hot pursuit of Defendant, a fleeing felon.

In support of the first of these arguments, the government cites *United States v. Sewell*, 942 F.2d 1209 (7th Cir. 1991), *cert. denied*, 112 S.Ct. 1567 (1992), and *United States v. Santana*, 427 U.S. 38, 42 (1976). In *Santana*, an informant from whom police officers had just purchased heroin told the officers that "Mom Santana has the money [marked bills the officers had provided in return for the narcotic]." The police officers drove to Defendant Santana's home, where they observed her "standing directly in the doorway—one step forward would have put her outside, one step backward would have put her in the vestibule of her residence." 427 U.S. at 40, n. 1. When the police approached Santana, she retreated into the

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[2] *continued*
this assumption is reasonable. *Cf. United States v. Pace*, 898 F.2d 1218, 1228-29 (7th Cir. 1990) (assuming that a large common garage beneath a condominium building is part of a "curtilage" to the home of a condominium resident).

vestibule of her house, where officers followed, arrested her, and seized heroin and the marked money. Reversing an order suppressing evidence of the heroin and bills, the Supreme Court concluded that defendant, while standing in the open doorway of her house, was in a "public place" for purposes of the Fourth Amendment, because (1) she could not have any expectation of privacy in the doorway and (2) she "was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house." 427 U.S. at 42.

The Seventh Circuit followed the reasoning of *Santana* in *United States v. Sewell*, 942 F.2d 1209 (7th Cir. 1991). In that case, Defendant had stood just inside the open door of his apartment, where he accepted $10.00 from an undercover officer in exchange for a tin foil packet containing marijuana which he handed to the officer through the open doorway. When the undercover officer identified himself and pulled out a badge and gun, Sewell attempted to close the apartment door, but the officer pursued him into the apartment and arrested him. As in *Santana*, the Seventh Circuit concluded that defendant Sewell had knowingly exposed himself to the public and therefore was not protected by the Fourth Amendment from arrest in his home. *Id.* at 1212; *see also United States v. Fleming*, 677 F.2d 602 (7th Cir. 1982).

The case before this court differs from *Santana* and *Sewell* because, in those cases, defendants actually engaged in unlawful conduct both in police presence and in public view. Defendant Craig, to the contrary, engaged in no unlawful activity in the officers' presence. The government argues that in this instance, the fact that Defendant entered his garage before the officers were able to arrest him is largely fortuitous. At the time he entered

his garage, Defendant was still as much exposed to public view as he would have been standing outside his home. Indeed, had Defendant parked his car on the street in front of his home, rather than pulling into the garage, the court's conclusion that probable cause existed for the arrest would end the inquiry required by this motion. Should the court conclude that Defendant remained in public view as he entered his garage, under the theory of *Santana* and *Sewell*, the motion to suppress should be denied.

The Seventh Circuit concluded that the distinction between announcing an arrest outside one's home and entering it before the announcement is made is more than a formalistic one, however. In *United States v. Berkowitz*, 927 F.2d 1376 (7th Cir.), *cert. denied*, 112 S.Ct. 141 (1991), defendant appealed from the district court's denial of his motion to suppress evidence obtained in a warrantless arrest in his home. Government agents asserted that they had announced their authority to arrest Berkowitz before they entered his home and that he did not resist. Defendant insisted the officers had entered before informing him he was under arrest. The Seventh Circuit remanded the case for an evidentiary hearing regarding these conflicting versions of events. If the government agent's version was correct, there was no breach of defendant's privacy interest, and no basis for suppressing the evidence.

> When the police assert from outside the home their authority to arrest a person, they have not breached the person's privacy interest in the home. If the person recognizes and submits to that authority, the arrestee, in effect, has forfeited the privacy of his home to a certain extent . . . .
>
> It is a different matter, however, for the police to enter a person's home, without his consent, before

> announcing their authority to arrest . . . . *Payton* holds that police may not enter a person's home without a warrant to arrest him; to hold it was proper for [the law enforcement agents] to enter Berkowitz's home in this case before announcing his arrest would be to sanction the very conduct that *Payton* holds the Fourth Amendment forbids.

927 F.2d at 1387-88. Distinguishing *Santana*, the Seventh Circuit concluded that someone who answers a knock at the door is not voluntarily exposing himself to public view, as is the person standing in his open doorway. *Id.* at 1388. The court noted, further, that at the time police went into Berkowitz's residence, there was sufficient information to support the issuance of a warrant and no reason not to obtain one.

The government relies here on *Berkowitz* for support of its second argument: that the police officers' conduct was justified as a "knock and announce." This argument is less persuasive. The "knock and announce" approach counseled in *Berkowitz* has little relevance here. Officer O'Deen and Sergeant DeHaven followed Defendant into his garage without knocking or otherwise requesting entry. With guns drawn, these officers directed Defendant to exit the garage and lie on the ground. Under no circumstances can Defendant Craig fairly be analogized to the "person who has submitted to the police's authority and stands waiting for the police to take him away." *Id.* at 1387. The "knock and announce doctrine" is inapplicable here and does not justify the warrantless entry into Defendant's Craig home.

Finally, the government argues that the warrantless entry and arrest was justified by exigent circumstances. In support of this argument, the government cites, among other cases, *United States v. Madewell*, 917 F.2d 301 (7th

Cir. 1990). In *Madewell*, defendant had drawn a gun on a police officer who had entered defendant's apartment at the invitation of defendant's roommate. The police officer returned immediately with additional officers, entered the apartment without a warrant, and arrested him in his bathroom. On appeal from his conviction of being a felon in possession of a firearm, defendant argued that his trial counsel failed effectively to represent him because counsel did not move to suppress the gun and post-arrest statement to police as the product of a warrantless entry. The court rejected the argument on the basis that a motion to suppress would not have been successful. The court noted that warrantless entry does not violate the Fourth Amendment where exigent circumstances exist. Here, the officer's forcible entry of defendant's apartment

> constituted pursuit of an armed individual whom the police had probable cause to believe had committed a felony. The officers could have reasonably believed that [defendant], having ejected [the officer] at gunpoint, was likely to flee the apartment and possibly pose a further threat to public safety or attempt to dispose of his gun.

917 F.2d at 304. In support of the conclusion that exigent circumstances justify a warrantless entry, the court cited a number of cases and observed that exigent circumstances exist "when there is a reasonable belief by police that their safety or the safety of others may be threatened," *quoting United States v. Dowell*, 724 F.2d 599, 602 (7th Cir.), *cert. denied* 466 U.S. 906 (1984), or when officers reasonably fear defendant will dispose of evidence. 917 F.2d at 305.

In addition to *Madewell* and the cases on which it relies, the government invokes cases upholding warrantless searches of vehicles or property where exigent circum-

stances exist. In *United States v. Ware*, 914 F.2d 997 (7th Cir. 1990), the police officer knew that an attempted armed robbery had occurred and observed a parked car matching the description of the car which had been pursued from the scene by other law enforcement officers. The officer's reasonable belief that the gun used in the attempted robbery was either in the car or had been discarded constituted the exigent circumstances necessary to seize the gun from the car without a warrant. *Id.* at 1001.

Madewell and *Ware* support the conclusion that exigent circumstances justified the officers' conduct in arresting Defendant without a warrant just outside his home. As concluded above, the officers reasonably believed that Defendant had shot an employee just one hour earlier on minimal provocation. The officers believed he was returning home directly from the shooting. It was, therefore, reasonable for these officers to conclude that Defendant still had with him the gun he had used to shoot his supervisor. The officers thus believed Defendant was armed and dangerous and that he had used only one bullet from the gun only an hour before. Although the officers knew that Defendant lived alone and they had no reason to believe anyone else was in the home with him, they reasonably concluded that they could expose themselves to unnecessary risk by effectuating Defendant's arrest in some fashion other than at gunpoint at the entry to his home. Had they permitted the garage door to close before seizing him, for example, Defendant might have been able to shoot at them from inside the home or garage. It was also reasonable for them to conclude that any delay in effectuating the arrest—for example, a delay occasioned by the effort to obtain a warrant—could have enabled Defendant to dispose of evidence such as blood stains on his clothing, glass or dust from the postal service facility, or

gun powder residue on his skin or clothing. Under the Seventh Circuit's analysis in *Madewell* and *Ware*, the circumstances of the Defendant's arrest were exigent, thus justifying the officers' minimal invasion to his home by entering his garage. This court should conclude that the government has met its burden of demonstrating that exigent circumstances justify the warrantless entry into Defendant's home.

B. *Inevitable Discovery*

Finally, the government argues that even a determination adverse to the government on the "exigent circumstances" issue would not require suppression of evidence of the gun. In a footnote to its response to the motion to suppress evidence, the government invokes the "inevitable discovery" doctrine. This doctrine, which represents an exception to the exclusionary rule, was approved by the Supreme Court in *Nix v. Williams*, 467 U.S. 431 (1984), *cert. denied*, 471 U.S. 1138 (1985). When the government obtains evidence through police misconduct or a constitutional violation, such evidence need not be suppressed "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means." *Id.* at 444; *Cf. United States v. Buchanan*, 910 F.2d 1571, 1573 (7th Cir. 1990) (affirming denial of motion to suppress cocaine found in defendant's hotel room where the police would have inevitably sought and obtained a warrant in order to search defendant's hotel room for a murder weapon.)

Courts employing the "inevitable discovery" doctrine since *Nix* have generally simply required the government to show that the police would have obtained the evidence

even if the misconduct had not occurred. In *United States v. Walker*, 673 F.Supp. 292, 299 (N.D. Ill. 1987) (Duff, J.), this court advanced a more explicit test for use of unlawfully obtained evidence under the "inevitable discovery" doctrine. The government here has met that three-part test: First, assuming, as this report does, that there was probable cause to arrest Defendant, the police certainly would have had probable cause to obtain a search warrant to search his vehicle. Second, it seems highly likely that a search of Defendant's Ford Bronco would have uncovered the pistol in question, since the weapon was in plain view on the center console between the front seats of the vehicle. Even if Defendant had successfully moved the gun from his vehicle into his house, it appears inevitable that the weapon would have been obtained in a lawful search by law enforcement officers. Finally, since the government can show that it had probable cause to arrest Defendant, it had a lawful basis to secure a warrant for a subsequent search that is "sufficiently distinguishable" from the earlier police misconduct (entering the garage without a warrant) "to be purged of the primary taint." 673 F.Supp. at 299 (citations omitted).

Significantly, Defendant has made no written response to this argument, nor did he effectively challenge the "inevitable discovery" argument orally. At oral argument, Defendant's counsel was not able to refute the notion that the gun would inevitably been discovered, beyond merely observing that the government's inevitable discovery contention undercuts the government's simultaneous argument that warrantless entry and arrest was necessary to prevent Defendant from disposing of the evidence. Again, under the inevitable discovery doctrine, assuming this court concludes that there was probable cause to arrest Defendant, his motion to suppress evidence of the

pistol seized from his vehicle at the time of his arrest should be denied.

CONCLUSION

Law enforcement officers had probable cause to arrest Defendant Craig, and the government has met its burden of showing that exigent circumstances justified the officers in entering Craig's garage without a warrant. Defendant's motion to suppress evidence of the gun and his post-arrest statements should be denied.

ENTER:

Date: August 6, 1992

/s/ REBECCA R. PALLMEYER
REBECCA R. PALLMEYER
United States Magistrate Judge

Counsel have ten days from the date of service to file objections to this Report and Recommendation with the Honorable Brian Barnett Duff. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1). Failure to object constitutes a waiver of the right to appeal. *Egert v. Connecticut General Life Ins. Co.*, 900 F.2d 1032, 1039 (7th Cir. 1990).